

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | WC Docket No. 10-90 |
| Connect America Fund |) | |
| |) | WC Docket No. 05-337 |
| High-Cost Universal Service Support |) | |

COMMENTS
of the
TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO

The Telecommunications Regulatory Board of Puerto Rico (“Board”) submits these Comments in response to the Wireline Competition Bureau’s (the “Bureau”) request for comment on model design and data inputs for Phase II of the Connect America Fund (“CAF”).¹ The Board welcomes this opportunity to submit these comments and to file reply comments on any matters raised by commenters in the Notice.

As the Notice explains, “[t]he Commission delegated to the Bureau the task of selecting a specific engineering cost model and associated inputs, consistent with the parameters set forth in the *USF/ICC Transformation Order*.”² The Commission directed that “the Bureau *must* ‘consider the unique circumstances of Alaska, Hawaii, *Puerto Rico*, the U.S. Virgin Islands and Northern Marianas Islands when adopting a cost model’ and *must* ‘consider whether the model ultimately adopted adequately accounts for the costs faced by carriers serving these areas.’”³

¹ See Wireline Competition Bureau Request for Comment on Model Design and Data Inputs for Phase II of the Connect America Fund, WC Docket 10-90, 05-337 (rel. June 8, 2012) (the “Notice”).

² Id. at ¶ 3 (citation omitted).

³ Id. at ¶ 3 (citation omitted; emphasis added).

The Board welcomes the Commission's and Bureau's specific attention to Puerto Rico, which has long been underserved by the Commission's programs because of its unique economic, geographic and related issues. Although Congress made clear in the Telecommunications Act of 1996 that "rural, *insular*, and high cost areas" warranted special consideration,⁴ this Congressional mandate has not been met to date. The CAF presents another opportunity for the Commission to correct this failure.

Background

In 1996, recognizing the fundamental changes in telecommunications regulation occurring in the United States, the Puerto Rico General Assembly enacted the Puerto Rico Telecommunications Act, 27 L.P.R.A. § 265 *et seq.* ("Law 213") to establish the Board and charge it with protecting the residents of Puerto Rico and ensuring a pro-competitive telecommunications market. Law 213 makes it the public policy to:

- establish specific, predictable, and sufficient support mechanisms to preserve and develop universal service.
- promote the investment of capital in the development of telecommunications infrastructure.
- ensure the availability of the broadest range of competitive possibilities in the offering of telecommunications services and facilities.
- promote competition and use the market forces as key factors in determining the prices, terms, availability and conditions of the service.
- give access to telecommunications services that are reasonably comparable to those provided in urban areas to consumers throughout the island, including low-income persons and those who reside in rural areas or in areas where access to such services is costly.
- guarantee the enjoyment of the service offered, without fear of unreasonable interruptions or interference.

⁴ 47 U.S.C. § 254(b)(3) (emphasis added).

Since its creation, the Board has undertaken major initiatives to discharge its statutory mandate; has presided over numerous interconnection arbitrations; has approved many interconnection agreements; has conducted a major proceeding on reducing intrastate access rates; has consistently advocated on behalf of the telecommunications consumers of Puerto Rico and has conducted multiple proceedings related to the protection of a competitive environment in Puerto Rico. The Board has also made it a priority, throughout its 16-year history, to focus on unserved areas of the Island, so that service is increased and improved in these areas.

The Board's authority to act for the benefit of the consumers of Puerto Rico has been confirmed by numerous courts. *See, e.g., Puerto Rico Telephone Company, Inc. v. Telecommunications Regulatory Board of Puerto Rico*, 665 F.3d 309 (1st Cir. 2011) (holding that the Board has authority to impose liquidated damages to improve performance); *Centennial Puerto Rico License Corp. v. Telecommunications Regulatory Board of Puerto Rico, et al.*, 634 F.3d 17 (1st Cir. 2011) (affirming the Board's decision to thwart behavior leading to higher prices); *WorldNet Telecommunications, Inc. v. Puerto Rico Tel. Co.*, 497 F.3d 1 (1st Cir. 2007) (upholding Board's authority to impose measures to improve overall performance); *Puerto Rico Telecommunications Co. v. Telecommunications Reg. Bd.*, 189 F.3d 1, 7 (1st Cir. 1999) (confirming the Board's authority to act for the benefit of consumers in Puerto Rico).

During its 14-year history, the Board has overseen and managed a transition from a telecommunications market dominated by a government-owned monopoly to a market characterized by competition and increasing sensitivity to the right of consumers to expect consistent high-quality service. Since the creation of the Board, Puerto Rico Telephone Company, Inc. ("PRTC"), once a government-owned ILEC, has been privatized. Since

privatization, progress has been made on improving the quality of service, provided both to consumers and to competing carriers.

In addition to acting at the Commonwealth level, the Board has repeatedly acted to protect the residents of Puerto Rico by participating in proceedings at the Commission. For example, in WT Docket No. 06-113, it submitted comments on the proposed transfer of PRTC to America Movil, asking the Commission to make sure that America Movil's commitment to invest in Puerto Rico was real, quantifiable and verifiable.⁵

The Commission thereafter approved the transfer, but required that America Movil invest \$1 billion over five years to improve service in Puerto Rico.⁶ The Commission also required America Movil to provide "a written report to the Commission on an annual basis describing the progress it has made in deploying infrastructure used to provide basic telephone and broadband services in Puerto Rico. This report, which shall include quantifiable and verifiable data shall be due to the Commission on December 31 of each calendar year."⁷

The Board has also submitted comments in various dockets, urging the Commission to act for the protection of the residents of Puerto Rico. *See* June 4, 2008 letter in CC Docket No. 97-80 (urging the Commission to grant the requested waiver of Choice Cable TV for the benefit of the consumers in southwestern Puerto Rico); March 19, 2007 Comments in CS Docket No. 97-80 (urging the Commission to grant a § 76.1204(a)(1) waiver for the benefit of consumers).

⁵ *Application of Verizon Communications, Inc., Transferor and America Movil, S.A. de C.V. Transferree, for consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Commissions Act*, WC Docket 06-113, DA 06-1245, July 14, 2006 Petition to Deny.

⁶ *Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, 22 FCC Rcd 6195 (2007).

⁷ *Id.*

Discussion

The Board is concerned that the current economic models do not adequately guarantee, as the Commission ordered, that the “unique circumstances” of Puerto Rico have been considered and that the model “adequately accounts for the costs faced by carriers serving these areas.”⁸

“Many in Puerto Rico still lack access to basic telephone and Internet services that the rest of the U.S. is able to take for granted.”⁹ A May 2012 Broadband Strategic Plan by the Puerto Rico Broadband Taskforce, which was formed, in part, to ascertain the size and scope of the digital divide in Puerto Rico, found that:

- approximately 14% of households in Puerto Rico, or approximately 176,000 households, remain unserved by *any* fixed broadband service (as compared with 5% in the United States);
- 43% of households lack access to broadband at speeds of 3 Mbps or greater;
- 68% of households lack access to broadband at speeds of 10 Mbps or greater.
- only 31% of Puerto Rico households subscribe to any kind of broadband, as compared with 68% in the United States.¹⁰

As the Broadband Task Force’s Strategic Plan found, the real and significant broadband gap in Puerto Rico has adverse effects on all aspects of the Island, including, most importantly, education and healthcare.

Additionally, as the Board previously showed in its submissions to the Commission, because Puerto Rico is an island, virtually all of the necessary supplies and materials must be transported in, adding further costs and taxes to the cost of equipment, storage, tools, parts and

⁸ *Id.* at ¶ 3 (citation omitted; emphasis added).

⁹ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket 96-45, WC Docket 05-337, Comments of Minority Media and Telecommunications Council (March 25, 2010).

¹⁰ http://www.prbroadband.org/wp-content/uploads/2012/05/executive_summary.pdf

labor. This fact is compounded by the island's topography, limited basic infrastructure, and high energy and backhaul costs, all of which make a network buildout and maintenance a time consuming and expensive exercise.

This reality is exacerbated by the economic situation in Puerto Rico. Residents of Puerto Rico have a significantly lower per capita income than any state in the United States. According to the last census, the average per capita income in Puerto Rico was less than \$8,200. This was less than half the per capita income of the lowest U.S. state (Mississippi: \$15,853). The lack of disposable income manifests itself in low adoption rates, which, in turn, leads to higher operations costs that depresses potential investment because of eroding margins.

On March 16, 2010, the Commission sent the National Broadband Plan to Congress. In an accompanying press release issued the same day, Chairman Genachowski stated "The National Broadband Plan is a 21st century roadmap to spur economic growth and investment, create jobs, educate our children, protect our citizens, and engage in our democracy. It's an action plan, and action is necessary to meet the challenges of global competitiveness, and harness the power of broadband to help address so many vital national issues."¹¹ Without the necessary infrastructure, however, which Puerto Rico does not currently possess, the promise and benefit of broadband will not reach its residents.

It was for this reason that, when the Commission issued its Order deciding not to adopt a specific funding mechanism for Puerto Rico, Commissioner Copps issued a separate statement in which he lamented "that the people of Puerto Rico must wait so long for infrastructure and service levels that the rest of the United States is already experiencing" and warned that the Commission's actions threatened to widen the digital divide:

¹¹ http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296880A1.doc

[w]hile some areas of the country are seeing such [broadband] service now, or may see it in the near future, the record shows that there are areas in Puerto Rico *that have no infrastructure*. Not only is voice service not available, but there is no wireline foundation for broadband service either – putting the people of Puerto Rico that much further from getting the broadband service that we recognize as a necessity in the Digital Age.¹²

This statement is indisputably correct.

The CAF presents another opportunity for the Commission to correct this situation and avoid increasing the disparity between the residents of Puerto Rico and those in the continental United States. While those in the continental United States will increasingly use broadband to “spur economic growth and investment, create jobs, educate our children, protect our citizens, and engage in our democracy,” without action by the Commission to make sure that “the model ultimately adopted adequately accounts for the costs faced by carriers serving these areas,”¹³ the residents of Puerto Rico will continue to be left behind because of a lack of basic infrastructure. And this gap will only increase in the years ahead, adversely affecting all of Puerto Rico, but especially education and healthcare.

In the Statement of Motives establishing the Board, the Puerto Rico General Assembly charged it with assuring “Puerto Rico of the same telecommunication and information privileges that United States citizens enjoy.” Throughout its history, the Board has acted to fulfill this obligation. Now, more than ever, the government and the residents of Puerto Rico need the Commission’s assistance to access basic and advanced telecommunications services, which the

¹² *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Linkup*, WC Docket 05-337, CC Docket 96-45, WC Docket 03-109, April 16, 2010 Order and Notice of Proposed Rulemaking, Copps Concurring Statement, at 41 (emphasis added).

¹³ *Id.* at ¶ 3 (citation omitted; emphasis added).

Commission has noted are “a fundamental necessity in modern society.”¹⁴ Unless the Commission’s economic model and data inputs take into account Puerto Rico’s extremely low telephone and broadband penetration rates; very high costs dictated by its geography; and exceptionally challenging economic situation; it will have failed its mandate.

The Board thus urges the Commission and the Bureau to make sure that any model it adopts, and any inputs chosen for that model, reflect the “unique circumstances” of Puerto Rico and account “for the costs faced by carriers serving these areas.” This includes, at a minimum, ensuring that some of the unique limitations (geography, demographics, lack of local infrastructure and market structure) faced by Puerto Rico carriers are addressed in the model. It also means making sure that the inputs are based on the realities of the cost of doing business in Puerto Rico.

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Respectfully submitted,

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¹⁴ *Federal State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 12208, ¶3 (2000).